

REMARKS

Claims 1-13 are pending. Applicants herewith amend claims 10-13 to be in better form for US practice. No new matter is added with the amendment.

The Restriction Requirement asserted that the claims define three (3) allegedly independent and distinct inventions and required the Applicant to elect one of the following three inventions:

Group I, Claims 1-9, drawn to the use of a peptide for the preparation of pharmaceutical composition for treating a Gram negative bacterial infection;

Group II, Claims 10 and 11, drawn to an antibacterial composition comprising at least a peptide and an antibacterial compound;

Group III, Claims 12 and 13, drawn to a product of formula (I) comprising the residue of a peptide, the residue of an antibacterial compound, and a spacer arm.

The Examiner also requested applicants to elect a species within claim 7.

Applicant hereby provisionally elects Group II, claims 10 and 11, drawn to an antibacterial composition comprising at least a peptide and an antibacterial compound, with traverse.

Applicant traverses the restriction between the claims of Groups II and III. The Examiner states that the claimed product of the specific formula of invention III does not share significant common structure with the product of invention II (page 4, next to last paragraph). Applicant disagrees with this assessment. The inventions of Groups II and III share an antibacterial compound, a covalent link, the same peptide residues and the same relationship between the antibacterial compound and the peptide. The invention of claims 12 and 13 correspond to claims 10 and 11, respectively, providing more detail. As such, claims 12 and 13 could depend from claims 10 and 11, respectively. In view of this explanation, applicant respectfully requests the Examiner to reconsider and reunite claims 10-13.

Applicants also disagree with the Examiner's assessment of Avrameas (WO 01/64738 A2) in paragraph 5. According to the Examiner, Inventions I-III do not relate to a single general inventive concept under PCT Rule 13.1 because they lack the same or

corresponding special technical features. The Examiner states that the special technical feature of the invention of Group I is the use of a peptide such as SEQ ID NO: 1 for the preparation of a pharmaceutical composition for treating a Gram negative bacterial infection. The Examiner believes that this invention was already disclosed in Avrameas, which is alleged to disclose SEQ ID No : 27, which is said to comprise Applicant's SEQ ID NO: 1, for transferring or transporting *in vivo* a substance of interest to cells for preparing of a pharmaceutical composition for treating Gram negative infections. Applicant respectfully submits that Avrameas does not disclose a peptide which permits the specific integration of an antibacterial agent into Gram negative bacteria cytoplasm. As such, Avrameas does not disclose the claimed invention.

In the event that this Restriction Requirement is maintained, Applicant expressly retains the right to seek rejoinder of the restricted claims, as appropriate, upon receipt of an indication of allowable subject matter. Reconsideration and withdrawal of the Restriction Requirement and consideration and allowance of all pending claims are respectfully requested.

Applicant reserves the right to file one or more divisional applications to the non-elected subject matter.

CONCLUSION


Withdrawal of the Restriction Requirement is respectfully requested for reasons set forth above. Examination on the merits is respectfully requested.

The Examiner is invited to contact the undersigned at the telephone number listed below, for any reason related to the advancement of this case.

In the event that additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required therefore are hereby authorized to be charged to our Deposit Account No. 01-2300 referencing docket number 021305-00294.

Respectfully submitted,

Date: November 16, 2009

By: 
Patricia D. Granados
Attorney for Applicant
Registration No. 33,683

Customer No. 04372
ARENT FOX LLP
1050 Connecticut Avenue, N.W.
Suite 400
Washington, D.C. 20036-5339
Telephone: (202) 857-6000
Facsimile: (202) 857-6395
PDG: knc